



IPW

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Ryuji Shiozaki, et al.

Serial No.: 10/500,819

Group Art Unit: 1745

Filed: July 7, 2004

Examiner: Tony Sheng Hsiang

For: POSITIVE ACTIVE MATERIALS AND NON-AQUEOUS
ELECTROLYTE BATTERIES EMPLOYING THE SAME

Commissioner for Patents
Alexandria, Virginia 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION**

Sir:

In response to the Notice of Abandonment dated January 15, 2008, in the above-identified application, and in accordance with Delgar, Inc., v. Schuyler (172 USPQ 513) (DDC 1971) and MPEP § 711.03(c), page 700-92, second column (Ed. 7, July 1998), Applicants state that the original Office Action was never received by Applicants and that Applicants searched the file jacket and docket records and this search indicated that the Office Action was not received. Thus, Applicants hereby petition for the Office Action to be re-mailed and for withdrawal of the holding of abandonment.

Accompanying this Petition is the Declaration of Mary C. Gibb, Manager of the Docketing Department in the undersigned's law firm of McGinn Intellectual Property Law Group, PLLC. As set forth in that Declaration, Ms. Gibb, in her capacity as Manager of the Docketing Department, is intimately familiar with all of the details regarding the processing

of mail received in the Docketing Department, including correspondence received from the U.S. Patent and Trademark Office. Attached to the Declaration is supporting documentation (Exhibits 1-3) showing that no Office Action in the subject application was processed by the Docketing Department or received by the undersigned's law firm.

Another attachment (Exhibit 4) to the Declaration of Ms. Gibb, is a copy of the front cover of the subject application's file jacket maintained in the undersigned's law firm. It should be noted that the file jacket cover shows the chronological sequence of correspondence between the undersigned's law firm and the U.S. Patent and Trademark Office. As noted on the cover, the application was filed on July 7, 2004, with Declaration and Assignment. There is no indication of receipt of any Office Action by the undersigned's law firm.

The undersigned has been associated with McGinn Intellectual Property Law Group, PLLC, for a number of years, and in that time has been able to rely on the performance of the Docketing Department to provide conscientious, reliable, and competent notice of due dates for responses to correspondence received from the U.S. Patent and Trademark Office. Based on the undersigned's familiarity with the good work performed by the employees of the Docketing Department, it is respectfully submitted that the only reasonable conclusion is that no Office Action was ever received by the undersigned's law firm for the above-identified application.

Based on the statements herein and on the detailed description provided in the Declaration of Ms. Gibb, which description is believed to satisfy fully the requirements set

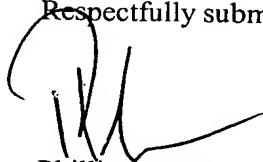
Docket No. Y31-170800C/KK
Application Serial No. 10/500,819
NGB.415

3

forth in MPEP § 711.03(c), Applicant respectfully requests that the Office Action be re-sent in the subject application and that the holding of abandonment be withdrawn.

Since this error is due to the U.S. Patent and Trademark Office, no fee is believed necessary. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-0481.

Respectfully submitted,



Phillip E. Miller, Esq.
Registration No. 46,060

Date: 2/28/08

**MCGINN INTELLECTUAL PROPERTY
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(703) 761-4100
Customer No. 21254



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Examiner: Tony Sheng Hsiang

For: POSITIVE ACTIVE MATERIALS AND NON-AQUEOUS
ELECTROLYTE BATTERIES EMPLOYING THE SAME

Honorable Commissioner of Patents
Alexandria, VA 22313-1450

DECLARATION OF MARY C. GIBB

Sir:

I, Mary C. Gibb, hereby declare as follows:

1. I am Manager of the Docketing Department of the law firm of McGinn Intellectual Property Law Group, PLLC.
2. My duties as Manager of the Docketing Department require me to be intimately familiar with how the firm handles the mail, facsimile, and courier packages which arrive at McGinn Intellectual Property Law Group, PLLC.
3. Each business day (Monday-Friday), McGinn Intellectual Property Law Group, PLLC, receives a large volume of correspondence from the U.S. Patent and Trademark Office (PTO). That correspondence relates to patent and trademark applications being handled by McGinn Intellectual Property Law Group, PLLC, and includes Office Actions. Generally, since McGinn Intellectual Property Law Group, PLLC, is located in Vienna, Virginia, PTO correspondence is received by the law firm within one or two business days after the PTO mailing date, although sometimes it takes longer. All mail is received in

the Docketing Department, including PTO correspondence. The PTO correspondence is handled as follows.

4. An individual employed in the Docketing Department of McGinn Intellectual Property Law Group, PLLC, receives all pieces of PTO correspondence before they are opened. That same individual opens each piece of correspondence from the PTO one at a time.

5. As the PTO correspondence is opened, an entry is made by that same individual by hand, in a docket book, for each such piece of correspondence requiring a response to be provided to the PTO by a certain due date. For example, an Office Action must be answered within the response time specified therein (within one, two, or three months of the mailing date), and so an entry would be made in the docket book on a due date for the required period of time for the Office Action and also six months after the mailing date of the Office Action (the non-extendable date). Attached as Exhibit 1 to my Declaration are copies of the pages of the docket book for items having a due date of July 25, 2007 and October 25, 2007 (three months and six months from the alleged mailing date of the Office Action). As can be seen from Exhibit 1, there is no entry for the above-identified application, indicating that the Office Action in question was never received by McGinn Intellectual Property Law Group, PLLC.

6. Once the PTO Office Action received on a given date has been manually entered in the docket book as just described, the appropriate file for the PTO Office Action is

pulled and matched up to that Office Action. The appropriate file and the PTO Office Action is then given to the secretary to the attorney responsible for handling the file. The secretary then enters the PTO Office Action and the response due date in the secretary's docket book and on the front cover of the application's file jacket.

7. On a weekly basis, a docket of cases due that week and the pertinent due dates for response for each case is given to each person at McGinn Intellectual Property Law Group, PLLC. This docket is double-checked with the docket maintained by the secretary. I have reviewed this list, and it does not include an entry for the above-identified application. Attached as Exhibit 2 to my Declaration is a copy of the list of cases submitted (due) for the weeks of July 24, 2007 and October 23, 2007. As can be seen from Exhibit 2, there is no entry relating to a PTO mailing of an Office Action in connection with the above-identified application.

8. In addition to manually entering entries in the docket book as just described, the same information is entered in our computer docketing program. Attached as Exhibit 3 to my Declaration is a copy of the report from the computerized docketing program for the above-identified application. As can be seen from Exhibit 3, there is no entry indicating that the Office Action in question was never received by McGinn Intellectual Property Law Group, PLLC.

9. Further, I attach Exhibit 4, which is a copy of the front cover of the subject application's file jacket. It should be noted that the file jacket front cover shows the chronological sequence of correspondence between the law firm and the U.S. Patent and

Trademark Office. The left side of the front cover is filled in by the Attorney's secretary as Actions are received and docketed by them. The right side is filled in by the Attorney's secretary as the Actions are completed. As shown, there is no evidence showing an Office Action was ever received.

10. Based on my review of Exhibits 1-4, and on my personal knowledge of the procedures followed by McGinn Intellectual Property Law Group, PLLC, in the Docketing Department for handling PTO Office Actions, I conclude that no Office Action was received by McGinn Intellectual Property Law Group, PLLC, for the above-identified application.

11. The Notice of Abandonment which was received by McGinn Intellectual Property Law Group, PLLC, on January 15, 2008, is the most recent communication from the PTO for the above-identified application. This Notice of Abandonment is addressed to our current address at 8321 Old Courthouse Road, Suite 200, Vienna, Virginia 22182-3817.

Further Declarant saith not.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: _____

2/22/08

**MCGINN INTELLECTUAL PROPERTY
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Mary C. Libb

Mary C. Libb
Manager, Docketing Department

CAS.001	5/18	Resp. (L. Day)	SMT
IEL.056	3/20	Resp. (L. Day)	FEC SMT
VATO.1216	^{NEW} 01	Resp. (L. Day)	SMT
NGB.1216		Resp. (L. Day) 7/25	SMT
EPI.051	4/25	Resp. (L. Day)	SMT SMT
ANA.025	DIV aband.	Final (L. Day)	SMT
Fuji.059		Resp. (L. Day) 4/25	PEH SMT
NGB.067	4/24	Resp. (L. Day)	SMT
YAN.042	2/22	Resp. (L. Day)	SMT
YOR.678	3/26	NCAP / Nomp (L. Day)	FEC
HIR.083	2/21	Resp. (L. Day)	FEC
NGB.108	3/21	Nomp (L. Day)	SMT
NGB.106	3/21	Nomp. (L. Day)	SMT
Suz.029	4/20	Resp. (L. Day)	JWF
HIR.167	7/25	Response	PEM
NGB.039	CONT. Allowed	Final (3mo.) Amend. 7/25	FEC
NGB.311	8/3	Issue Fee	JCH
GOT.080	ext.	Final (2 mo.) allowed	FEC
IEL.056	new 01	Final (2 mo.) amend. 7/25	FEC
WAR.216	7/24	Nomp	SMT
Suz.028	7/25	Appeal Brief	PNCG
YOR.335	DIV 1	7/25 Response	SMT SMT
Fuji.090	7/25	IDS	SMT
KUM.005	7/5	Interview Summary	DJC
YOR.465	7/25	Interview Summary	FEC

HR. 167 7/25	Resp. (L. Day)	PER
NGB. 039 CONT.	Final (L. Day) allowed	FEC
GOT. 080 allowed	Final (5 mo.)	FEC
LET. 056 ext.	Final (5 mo.) new at	FEC
YOR. 335 DIV 1 7/25	Resp. (L. Day)	SMN
HR. 134 RCE	FINAL (4 Mo.)	DJL
QAO. 031 10/24	L. fee (L. Day)	SKT
SOE. 001 ext.	Response 11/29	JK SKN
Fujit. 085 10/25	Response	SKN
WAR. 125 9/25	Response	SKN
HR. 140 10/25	Response	SKN
YOR. 489 (error)	L. fee (L. Day) 10/25	FEC
KUD. 089 10/24	L. fee (L. Day)	PER
UNI. 040 10/24	Response	PER SKN
WAR. 101 11/7	Issue Fee	DMCG
Fujit. 097 ext. to 11/2	HDS	SKN
NGB. 087 CONT. error	HDS	SKN
Fuo. 071 10/24	Response (1 mo.)	SKN
Fujit. 076 10/24	Response (1 mo.)	SKN
Fujit. 075 10/25	HDS	SKT
HR. 042 DIV 10/5	Response (1x)	PER
NCC. 340 ext.	Response (1x) 11/20	DJL
YOR. 498 DIV 10/24	L. fee (L. Day)	SKT

DOCKET

July 24, 2007 - July 30, 2007

Please compare this with your personal docket and inform us of any changes or additions!

<u>DUE DATE</u>	<u>FILE</u>	<u>ACTION</u>	<u>ATTY</u>
Tuesday, 7/24/07	KAT.037	FINAL (L. Day)amend. 6/12	DJL
	MAR.067	FINAL (L. Day)amend. 6/25	DJL
	KUD.101	Issue Fee	DJL
	NGB.572	Response	JWF
	KUD.098	Issue Fee	JWF
	NEC.276 DIV	FINAL (3 mo.)amend. 6/29	PEM
	JTL.011	Response	SMT
	YOR.228 DIV	FINAL (3 mo.)amend. 6/25	SMT
	NGB.506	I. Fee (L. Day)	SMT
	RYU.002	Issue Fee	SMT
	HIR.099	Response	PmcG
	KOH.002	TM Response (3 mo.)	SMM
	KOH.003	TM Response (3 mo.)	SMM
	KUD.185	IDS	SMM
	KATO.041	Issue Fee	DAD
	YOR.673	IDS	JEH

Issue Date:

7,248,870 FUK.011 DIV SMM 7,248,543 EBI.011 SMM 7,248,254 FUJ.059 PmcG
7,247,884 NGB.150 SMT 7,249,366 YOR.053 DIV PEM 7,248,078 IEI.053 SMM

Wednesday, 7/25/07	NGB.126	Resp. (L. Day)	SMT
	YOR.335 DIV1	Response	SMT
	HIR.167	Response	PEM
	NGB.039	FINAL (3 mo.)amend. 6/25	FEC
	GOT.080	FINAL (2 mo.)	FEC
	IEI.056	FINAL (2 mo.)	FEC
	YOR.465	Interview Summary	FEC
	NGB.311	Issue Fee	JEH
	WAK.216	NOMP	SMM
	FUJI.090	IDS	SMM
	SUZ.028	Appeal Brief	PmcG
	KUM.005	Interview Summary	DJL

Thursday, 7/26/07	NIS.056 DIV	FINAL (5 mo.)	FEC
	YOR.292	Non-Compliant Appeal Brief	FEC
	NGB.329	Response	SMT
	YOR.484 DIV	Response (1 mo.)	SMT

Exhibit 2
(page 1 of 5)

Friday, 7/27/07	NGB.306	FINAL (5 mo.)	JEH
	ORI.055	Maintenance Fee (L. Day)	SMM
	ORI.034	Maintenance Fee (L. Day)	SMM
	IEI.036	I. Fee (L. Day)	SMM
	NGB.707	Issue Fee	SMM
	NGB.723	Issue Fee	SMM
	NGB.722	Issue Fee	SMM
	LEN.025	Draft TM App.	SMM
	EDU.006	TM Office Action (4 mo.)	SMM
	SHIM.018	Response	JEH
	NGB.365	FINAL (3 mo.)	JWF
	NGB.039 CONT.	FINAL (3 mo.)	FEC
	IEI.085	Issue Fee	FEC
	MAS.006	Issue Fee	FEC
	KAT.036	Notice of Abandonment	PEM
	YOR.418	IDS	PEM
	Saturday, 7/28/07	NCF.001	Renewal (1 yr. date)
EDU.003		TM Office Action (4 mo.)	SMM
FUJ.076		Response (1 x)	DAD
Sunday, 7/29/07	YOR.430 DIV	FINAL (L. Day)	SMT
	KATOR.004	FINAL (2 mo.)	SMT
	YOR.676	NCAP	SMT
	USH.028	FINAL (4 mo.)amend. 6/27	PEM
	FUJI.028	Examiners Answer	FEC
	WAK.219 REI	NOMP	FEC
	KATO.069	FINAL (2 mo.)	FEC
	YOR.489	Response (1 x)	FEC
	FUJIT.094	IDS	SMM
NGB.444	Response (1 x)	JWF	
Monday, 7/30/07	AIR.001	National Stage Entry	SMT
	USH.027	FINAL (2 mo.)	SMT
	KATO.108	FINAL (2 mo.)	SMT
	PRI.004	FINAL (2 mo.)	SMT
	NGB.088 CONT. 2	Resp. (L. Day)	SMT
	NEC.309	Response	DAD
	NEC.295	Response	SMM
	ORI.061	Response	SMM
	MATSUB.004	Issue Fee/Corrected Drwgs	SMM
	WAK.218	IDS	SMM
	HIBI.046	NCAP	SMM
	NGB.767	Preliminary Amendment	SMM
	YOR.526	FINAL (3 mo.)amend..7/2	PEM
	TAKAH.003	FINAL (2 mo.)	PEM
	IEI.072	Response (1 x)	FEC
	IEI.073	Response (1 x)	FEC

Exhibit 2
(Page 2 of 5)

DOCKET

October 23, 2007 - October 29, 2007

Please compare this with your personal docket and inform us of any changes or additions!

<u>DUE DATE</u>	<u>FILE</u>	<u>ACTION</u>	<u>ATTY</u>
Tuesday, 10/23/07	FUS.055	I. Fee (L. Day)	DJL
	IEI.013	I. Fee (L. Day)	DJL
	FUS.070	FINAL (2 mo.)	DJL
	KAJ.001	I. Fee (L. Day)	PEM
	YOR.547	Issue Fee	PEM
	NGB.412	Response (2 x)	PEM
	KATO.098	FINAL (3 mo.)amend. 10/5	FEC
	YOR.719	FINAL (2 mo.)	FEC

Issue Date:

7,286,856 YAN.039 DAD D553,376 NGB.707 SMM D553,377 NGB.723 SMM
7,286,390 KUD.130 FEC 7,286,167 NGB.320 SMM 7,284,969 NGB.307 JEH
7,285,906 EBI.019 SMM 7,284,927 ORI.102 JWF 7,285,803 HIR.109 JWF
7,286,669 AMA.048 PmcG D553,767 MATSUB.004 SMM D553,650 IWA.054 SMM
7,286,475 YAN.035 DAD

Wednesday, 10/24/07	KOH.002	TM Resp. (L. Day)	SMM
	KOH.003	TM Resp. (L. Day)	SMM
	HIR.231	I. Fee (L. Day)	SMM
	KATO.143	I. Fee (L. Day)	SMM
	NGB.591	Issue Fee	SMM
	HIR.209	IDS	SMM
	KATO.066	IDS	SMM
	NEC.363	FINAL (2 mo.)	SMM
	FUS.095	IDS	SMM
	NGB.777	NOMP (1 x)	SMM
	IEI.083	Response	FEC
	NGB.536	Response	FEC
	YOR.543	Response (1 mo.)	FEC
	NGB.286	FINAL (3 mo.)	SMT
	NGB.088 CONT.2	IDS	SMT
	NGB.088 CONT.3	IDS	SMT
	YOR.425 CONT.	FINAL (2 mo.)	SMT
	IEI.022	FINAL (2 mo.)	PmcG
	WAK.111	FINAL (2 mo.)	DAD

Exhibit 2
(Page 3 of 5)

Thursday, 10/25/07

IEI.056	FINAL (5 mo.)	FEC
YOR.489	I. Fee (L. Day)	FEC
HIR.124	FINAL (4 mo.)amend. 9/5	DJL
NEC.340	Response (1 x)	DJL
ONO.031	I. Fee (L. Day)	SMT
FUJIT.075	IDS	SMT
YOR.498 DIV	I. Fee (L. Day)	SMT
SOE.001	Response	JL
FUJIT.085	Response	SMM
HIR.140	Response	SMM
FUJIT.097	IDS	SMM
FUS.071	Response (1 mo.)	SMM
FUJIT.076	Response (1 mo.)	SMM
KUD.089	I. Fee (L. Day)	PEM
UNI.040	Response	PEM
WAK.101	Issue Fee	PmcG

Friday, 10/26/107

MAR.094	Response	SMT
FUS.081	Response	SMT
YOR.228 DIV	Response	SMT
USH.015	Response	SMT
USH.004 DIV	I. Fee (L. Day)	FEC
KAT.041	FINAL (3 mo.)amend. 10/5	FEC
KATO.140	Response	FEC
YAS.040	FINAL (3 mo.)	FEC
BUR096	I. Fee (L. Day)	FEC
KATO.063	Issue Fee	FEC
HIR.120	Response	PEM
KATO.079	Response	PEM
COS.001	Response	PEM
WAK.134	Issue Fee	PEM
NGB.305	Response	JL
MAR.066	I. Fee (L. Day)	DJL
FUJ.065	FINAL (3 mo.)	DJL
IEI. 036	I. Fee (L. Day)	SMM
HIR.155	Response	SMM
IEI.096	Issue Fee	SMM

Exhibit 2
(Page 4 of 5)

Saturday, 10/27/07

MAR.088	FINAL (4 mo.)	PEM
HIR.161	FINAL (2 mo.)	PEM
YOR.475	Response	FEC
NEC.334	Response	FEC
NEC.292	Response (1 mo.)	FEC
MAT.026	Response (1 x)	FEC
WAK.113	FINAL (3 mo.)	DJL
NEC.298	Response	SMM
ORI.100	Post Registration office action (3 mo.)	SMM
TAK.051	IDS	SMM
NNN.792	NOMP	SMM
KAW.004	NOMP (1 x)	SMM
MAS.023	FINAL (3 mo.)	SMT
NGB.362	FINAL (2 mo.)	FS

Sunday, 10/28/07

CAS.001	FINAL (4 mo.)	SMT
NGB.308	Notice of abandonment (L. Day)	SMM
NNN.793	NOMP	SMM
NNN.791	NOMP	SMM
UNI.021	RCE and Preliminary Amend.	PEM

Monday, 10/29/07

YOR.499	I. Fee (L. Day)	FEC
KUM.005	I. Fee (L. Day)	DJL
NGB.491	I. Fee (L. Day)	SMM
CAL.001	TM Response (4 mo.)	SMM

Exhibit 2
(Page 5 of 5)

Exhibit 3

PEM

NGB:

Y31-170800C

PCT/jp03/0

2002-08822

2002-1378-20

INVENTOR Ryuji SHIOZAKI, et al

SERIAL NO. 10/500,819 FILED JULY 7, 2004

TITLE Positive Active Materials and Non-Aqueous Electrolyte Batteries Employing The Same

ASSIGNEE Yusaka Corporation GS Yusaka Corporation

ASSIGNMENT RECORDED 7/7/04 REEL 015838 FRAME 0184

[illegible]